IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES	)	
	)	**RULING: DEFENSE MOTION-**
v.	)	**DUE DILIGENCE**
	)	
MANNING, Bradley E., PFC	)	
U.S. Army, [redacted]	)	
Headquarters and Headquarters Company,	)	
U.S. Army Garrison, Joint Base Myer-	)	DATED: 25 June 2012
Henderson Hall, Fort Myer, VA 22211	)	

1. On 10 May 2012, as part of its Motion to Compel Discovery, Defense moved this court to suspend the proceedings for several weeks and require the Government to state with specificity the steps it has taken to comply with its obligation to disclose information favorable to the defense IAW RCM 701(a)(6). Defense further moved the Court to grant a 2-3 month continuance after receipt of completed discovery until the start of trial. On 29, 30, and 31 May 2012, and on 7 June 2012, Defense submitted additional filings to the Court on this issue, expanding its request that the Court suspend the proceedings and require the Government to state with specificity the steps it has taken to comply with its discovery obligations under RCM 701(a)(2), 701(a)(6), and 905(b)(4). The Government opposes.

2. Defense moves the Court to require the Government to answer the following questions:

(1) What agencies (63) has the Government contacted to conduct a *Brady* Review? Has the Government attempted to contact all agencies, to include: (Interagency Committee Review) (President's Intelligence Advisory Board, House of Representatives Oversight Committee) to conduct a *Brady* review?

(2) When did the Government make its inquiry?

(3) How many documents did the Government review?

(4) What were the results of the Government review?

(5) What did the Government ask of these agencies?

3. Defense further moves the Court to require the Government to turn over *Brady* material or state there is no *Brady* information from the following files: CID, DIA, DISA, CENTCOM and SOUTHCOM, FBI, DSS, DOS, DOJ, Government Agency, ODNI, ONCIX.

4. Defense provided the Court with a 17 April 2012 Memorandum for Principal Officials of HQDA stated that "it was only recently determined that no action had been taken by HQDA

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pursuant to the 29 July 2011 memorandum from DOD OGC to HQDA requesting it to task Principal Officials to search for, and preserve, any discoverable information.

The Law: The Court has authority to order the Government to provide a due diligence statement IAW RCM 701(g)(1).

Conclusions of Law:

1. Since referral, there have heen 2 hroad Defense motions to compel discovery IAW RCM 701(a)(2) and RCM 701(a)(6) for information from the files of multiple DoD agencies, aligned government agencies, non-aligned government agencies, Interagency Committee Review, President's Intelligence Advisory Board, and House of Representative Oversight Committee.

2. This is a complex case involving multiple government agencies and entities. The Court is not clear what identifiahle files pertaining to PFC Manning relevant to this case are maintained hy the various agencies (including hut not limited to those referenced in paragraph (3) above), what inquiries the Government has made to discover the existence of agency files pertaining to PFC Manning, when the Government hecame aware of the existence of particular agency files, and what files the Government has examined under RCM 701(a)(6)/*Brady* and/or RCM 701(a)(2).

3. This Court must rule upon the motions to compel discovery that have heen filed in this case and a speedy trial motion to he filed hy the Defense. One document containing the information in paragraph (2) ahove will assist the Court in addressing discovery and speedy trial issues arising during this trial.

4. The Court makes no findings of lack of due diligence hy the Government. Both parties will have an opportunity to litigate the due diligence of the Government in providing discovery during the speedy trial motion.

5. By **25 July 2012,** the Government will provide the Court with a statement of due diligence, in the format attached, stating:

a. Steps the Government has taken to inquire ahout the existence of files pertaining to PFC Manning from Government agencies/entities;
h. When these inquiries were made;
c. When the Government became aware of the existence of each file pertaining to PFC Manning from Government agencies/entities;
d. What files the Government has searched for *Brady*/RCM 701(a)(6) information and when;
e. What files the Government has searched for information material to the preparation of the defense IAW RCM 701(a)(2) and when.
f. What information from the ahove files the Government has disclosed to the Defense;
g. What files the Government has reviewed and found no discoverable information;
h. What files the Government has decided not to disclose to the Defense;
i. What files the Government has identified that have yet to he searched for *Brady*/RCM 701(a)(6) and/or RCM 701(a)(2).

6. By **25 July 2012,** the Government will provide a timeline and synopsis of the inquiries and communications between the Government and ONCIX.

7. The filing by the Government will be *ex parte* to the Court. The Government will identify what classified filings have not been identified to the Defense.

8. The Court will not suspend the proceedings pending the Government response. The case calendar will continue into July and August with scheduled motions that are not impacted by receipt of defense discovery. At the July 2012 Article 39(a) session, the case calendar will be revised to reflect Article 39(a) sessions after August at the 6 week schedule reflected in the current scheduling order.

9. The Court will grant a reasonable continuance to the Defense upon receipt of compelled discovery to prepare their case.

The Defense Motion for Due Diligence Filing is **GRANTED** in part as set forth above.

So **ORDERED**: this 25th day of June 2012.

DENISE R. LIND
COL, JA
Chief Judge, 1st Judicial Circuit